

2005 DRAFTING REQUEST

Bill

Received: 03/29/2005

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **David Zien (608) 266-7511**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies: **CTS**

Submit via email: **YES**

Requester's email: **Sen.Zien@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Cash discounts for retail purchases of motor fuel

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	mkunkel 03/29/2005	lkunkel 03/29/2005	pgreensl 03/30/2005	_____	lemery 03/30/2005	mbarman 03/30/2005	

FE Sent For:

<END>

↳ Not Needed

2005 DRAFTING REQUEST

Bill

Received: **03/29/2005**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **David Zien (608) 266-7511**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies: **CTS**

Submit via email: **YES**

Requester's email: **Sen.Zien@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Cash discounts for retail purchases of motor fuel

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	mkunkel 03/29/2005	lkunkel 03/29/2005	pgreensl 03/30/2005	_____	lemery 03/30/2005		

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: **03/29/2005**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **David Zien (608) 266-7511**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - other**

Extra Copies: **CTS**

Submit via email: **YES**

Requester's email: **Sen.Zien@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Cash discounts for retail purchases of motor fuel ✓

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel	1/1mk 3/29	3/29 P8	3/29 P8			

FE Sent For:

<END>

Kunkel, Mark

From: Hogan, John
Sent: Monday, March 21, 2005 10:10 AM
To: Kunkel, Mark
Subject: FW: Fair dealership law

Mark,
Are you working on this draft per instructions from Ron Sklansky? Do you have any questions for me?

John Hogan
Chief of Staff
Senator Dave Zien's Office
(608) 266-7511

From: Sklansky, Ron
Sent: Monday, March 21, 2005 9:39 AM
To: Hogan, John
Subject: RE: Fair dealership law

John:

I think Mark Kunkel will be working on the request, although I gave it to Bob Nelson originally because Mark was not in at the time.

Ron

-----Original Message-----

From: Hogan, John
Sent: Monday, March 21, 2005 8:48 AM
To: Sklansky, Ron
Subject: Fair dealership law

Ron,
Who is the drafter we'll be working with on our bill to change credit card contracts? I should get an update from him.

John

3/17

From Ron Sklansky -- LC

For Senator Zien

For Mark Huntel

Consumer says retail. told her
that under the credit card provider agreement
the retailer cannot encourage
the use of cash!

Zien wants to stop this
~~prev~~ requirement on new
or revised contracts between
credit provider and retailer

See 135.025 (3) - Use that
in this draft also!

gas retailer

call Gabe McGraw /
VISA,

→ call Gabe Buswell

- limit to VISA, etc,
not gas cards (Shell, etc.)

Kunkel, Mark

From: Hogan, John
Sent: Thursday, March 24, 2005 10:35 AM
To: Kunkel, Mark
Subject: gas for cash

Mark,
I spoke with Russ Whitesel because Sklansky is out. He thinks it should be ok to say that WI gas retailers cannot be prohibited by a (any?) contract from offering a discount cash price for gas. Thereby taking the focus off WHO actually enters into that contract. Reason bein is that we initially thought the contract was between the retailer and the credit card co. We believe it's a contract b/w the oil co and the credit co that prohibits retailers from offering a cash price.

Hope this is clear as mud.

John Hogan
Chief of Staff
Senator Dave Zien's Office
(608) 266-7511



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2587/1

MDK:.....

lmk

D-NOTE

2005 BILL

Tomorrow
3/30
4pm

GenCat

1 AN ACT ...; relating to: cash discounts for retail motor vehicle fuel purchases. ✓

Analysis by the Legislative Reference Bureau

This bill allows motor vehicle fuel retailers to offer discounts for purchases of motor vehicle fuel that are paid by cash. ✓ The bill provides that contracts and agreements that are inconsistent with the bill, including contracts and agreements in effect on the effective date of the bill, are void and unenforceable, but only to the extent that they are inconsistent with the bill. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 134.78 of the statutes is created to read:

3 134.78 Cash discounts; motor vehicle fuel retailers. A motor vehicle fuel
4 retailer may offer discounts for purchases of motor vehicle fuel that are paid by cash. ✓
5 The effect of this section may not be varied by contract or agreement. ✓ Any contract
6 or agreement inconsistent with this section is void and unenforceable to that extent
7 only. ✓

8 SECTION 2. Initial applicability.

BILL

SECTION 2

1 (1) This act first applies to contracts and agreements in effect on the effective
2 date of this subsection. ✓

3

(END)



DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2587/1dn

MDK:.....

Imk

(date)

Sen. Zien:

This bill applies to existing contracts that are in effect on the effective date of the bill, and not just to future contracts that are made on or after the effective date. Is that okay? ✓

Because the bill applies to existing contracts, the bill is subject to an attack that it is an unconstitutional impairment of contract. ✓ The federal and Wisconsin constitutions both provide that the legislature may not pass a law "impairing the obligation of contracts" (article I, section 10, of the U.S. Constitution and article I, section 12, of the Wisconsin Constitution). However, this prohibition is not absolute. ✓ The courts have held that a state may impair an existing contract in the exercise of its police powers for the general public welfare. ✓ Wisconsin courts would likely use the following analysis to determine whether the legislature may impair an existing contract for the general public welfare: ★

LPS: Pls ✓ spacing.

1. Does the legislation substantially impair an existing contract? ✓
2. If the impairment is substantial, is there a significant and legitimate public purpose for the legislation? ✓
3. Even if there is a significant and legitimate public purpose, is the legislation a reasonable and necessary means of achieving that public purpose? ✓

Although it is not possible to predict how a court would decide a challenge to this bill, I thought that you should at least be aware of this issue. ✓

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2587/1dn
MDK:lmk:pg

March 29, 2005

Sen. Zien:

This bill applies to existing contracts that are in effect on the effective date of the bill, and not just to future contracts that are made on or after the effective date. Is that okay?

Because the bill applies to existing contracts, the bill is subject to an attack that it is an unconstitutional impairment of contract. The federal and Wisconsin Constitutions both provide that the legislature may not pass a law "impairing the obligation of contracts" (article I, section 10, of the U.S. Constitution and article I, section 12, of the Wisconsin Constitution). However, this prohibition is not absolute. The courts have held that a state may impair an existing contract in the exercise of its police powers for the general public welfare. Wisconsin courts would likely use the following analysis to determine whether the legislature may impair an existing contract for the general public welfare:

1. Does the legislation substantially impair an existing contract?
2. If the impairment is substantial, is there a significant and legitimate public purpose for the legislation?
3. Even if there is a significant and legitimate public purpose, is the legislation a reasonable and necessary means of achieving that public purpose?

Although it is not possible to predict how a court would decide a challenge to this bill, I thought that you should at least be aware of this issue.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

Emery, Lynn

From: Hogan, John
Sent: Wednesday, March 30, 2005 11:12 AM
To: Emery, Lynn
Subject: jacket request

Lynn,

LRB 2587/1 will be senate bill, and have an assembly companion. Please send assembly jacket to Rep. Jeff Wood's office.

Thank you,

John Hogan
Chief of Staff
Senator Dave Zien's Office
(608) 266-7511

Emery, Lynn

From: Hogan, John
Sent: Wednesday, March 30, 2005 11:09 AM
To: LRB.Legal
Subject: Draft review: LRB 05-2587/1 Topic: Cash discounts for retail purchases of motor fuel

It has been requested by <Hogan, John> that the following draft be jacketed for the SENATE:

Draft review: LRB 05-2587/1 Topic: Cash discounts for retail purchases of motor fuel